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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Indian Law Resource Centre, a non-governmental organization on the roster*

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

International Legal Standards for the World Bank and other Multilateral Development Banks

The work of United Nations bodies on the right to development is important and it is appreciated. While this work continues, however, human rights violations that result from actions and inaction of multilateral development banks (MDBs), such as the World Bank, are occurring, and they demand the urgent attention of the Human Rights Council. Poor and marginalized communities and individuals are most often those who suffer serious violations of basic human rights. The communities affected often include indigenous individuals and peoples. These peoples and individuals are precisely those who, instead of being subjected to exploitation and removal, should benefit the most from development.

Development projects financed by MDBs frequently result in human rights violations against individuals and communities, violations such as forced evictions, and in the case of indigenous peoples, the destruction or disruption of their cultures and societies, and violations of their right of self-determination and self-governance. All of these individuals and communities are entitled, without discrimination, to all human rights including the right to development. By accepting the legal obligations to respect, promote and protect human rights, MDBs could better prevent and remedy violations and better meet their poverty alleviation goals.

However, MDBs insist that they are not like States and therefore, not legally required to respect and promote human rights. For example, the World Bank has taken the position, in accordance with the opinion of its General Counsel, that it cannot take into account non-economic matters such as human rights in its financing activities.¹ The World Bank and other MDBs have maintained this shockingly backward position for many years, despite widespread condemnation. These are very large and powerful organizations, made up of and controlled by States, and the harm that results from their refusal to take responsibility for the human rights consequences of their decisions and actions can be of enormous importance. This is an issue that the Human Rights Council cannot continue to ignore.

Human rights violations are committed in connection with bank financed development projects because MDBs do not carry out robust human rights due diligence and they do not do enough to guard against harms for those affected by projects. MDBs and their Member States are failing to promote respect for human rights and to demand actions to effectively protect human rights. Human rights due diligence measures, including human rights impact assessments and safeguards, should be required prior to any financing decisions.

None of the MDBs internal “operational” or “safeguard” policies contains or proposes any binding rules that would require MDBs, like the States that comprise them, to respect, promote, and protect human rights in all MDB activities. MDBs and the projects they support should be carefully and independently monitored, and there should be effective procedures for assuring accountability for human rights violations.

Concrete and enforceable rules of international law must be recognized and applied to MDBs. Although existing international law is arguably sufficient and applicable to MDBs, they steadfastly reject the obligations of existing law and deny its application to them. Binding human rights rules for MDBs are justified both by existing principles of international law and by the fact that, as a practical matter, such concrete rules are needed to protect the Earth and our human rights.

The Human Rights Council needs to address this issue, because it has increasingly become a matter of global concern. For example, in June 2013, the Vienna+20 Conference on Human Rights called upon the U.N. and its stakeholders to address the responsibility of international intergovernmental organizations engaged in human rights violations.² In April 2013, four special procedures mandate-holders asked the World Bank to adopt human rights

¹ Memorandum from the General Counsel of the World Bank, Ibrahim Shihata, Issues of “Governance” in Borrowing Members – The Extent of their Relevance under the Bank’s Articles of Agreement (1999) (on file with Indian Law Resource Center).

² See *Vienna+20: Advancing the Protection of Human Rights: Achievements, Challenges and Perspectives 20 Years after the World Conference*, Conference Report by Austria & Office of the High Commissioner for Human Rights, Vienna Hofburg, June 27-28, 2013, ¶ 3, <http://www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf>. See also *Strengthening the Human Rights Movement Globally: Vienna*

standards within the review of its Environmental and Social Safeguard Policies.³ Likewise, in June 2012, during the Rio+20 Conference on Sustainable Development, twenty-one special procedures mandate-holders stressed the need to ensure a unified accountability mechanism at the U.N. to monitor progress in achieving the sustainable development goals from a human rights viewpoint.⁴

The Indian Law Resource Center has studied in depth the legal question of MDBs' responsibility to protect human rights and the environment,⁵ and in 2009 we wrote and circulated a complete set of legal principles addressing their responsibility.⁶ We also wrote and circulated a paper last year proposing international law rules to govern MDBs and international agencies that fund climate change-related projects, such as REDD+ (Reducing the Emissions from Deforestation and Forest Degradation).⁷ These legal studies, as well as those developed by the U.N. and others, should form the intellectual basis for the process of specifying legal standards for MDBs.

We call upon the Human Rights Council to take action soon to specify and clarify the human rights obligations of MDBs. This issue has superficially been raised and discussed previously over a period of years—from the Millennium Declaration to the Declaration on the Right to Development, to the Declaration on the Rights of Indigenous Peoples. Related discussions continue through the Working Group on the Right to Development and the ongoing human rights mainstreaming efforts by the Office of the High Commissioner for Human Rights, as well as the work of many U.N. Special Procedures. However, the World Bank and other MDBs have done little or nothing to improve their performance or their understanding of their human rights obligations. These banks are not likely to adequately protect human rights and the environment unless they are legally and explicitly compelled to do so.

This is the right time to start a process toward creating binding human rights rules for MDBs. We urge that a panel discussion on this issue be held at the next session of the Human Rights Council. The current global discussion about the post-2015 development goals is an important opportunity to ensure global governance and sustainable development from a human rights law perspective. To be effective, post-2015 development goals must take into account the human rights obligations of MDBs.

Important work, which can contribute to clarifying and implementing the human rights obligations of the World Bank and other MDBs, has already been completed. For instance, the 2011 U.N. International Law Commission's "Draft Articles on Responsibility of International Organizations" assert that intergovernmental organizations, such as MDBs, are subjects of international law, and as such they have international law obligations that they must comply with.⁸ The Draft Articles also point out the international responsibility of both the organization and the states concerned.⁹

The 2012 "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights" articulate the human rights obligations of States when acting jointly as an intergovernmental

+20, Declaration adopted by civil society organizations, Vienna, June 26, 2013, <http://viennaplus20.files.wordpress.com/2013/07/vienna-20-cso-declaration-final-post2.pdf>.

³ *UN Experts Urge World Bank to Adopt Human Rights Standards on the Eve of Gathering in Washington*, Geneva, April 18, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13248&LangID=E>.

⁴ *If Rio+20 Is To Deliver, Accountability Must Be At Its Heart*, Open Letter from Special Procedures mandate-holders to States negotiating the Outcome Document of the Rio+20 Summit (June 2012), <http://www.ohchr.org/EN/HRBodies/SP/Pages/OpenLetterRio20.aspx>.

⁵ See Leonardo A. Crippa, *Multilateral Development Banks and Human Rights Responsibility*, 25 AM. U. INT'L. REV. 549 (2010). See also Leonardo A. Crippa, *Climate Change: Its Potential to Melt the Glacial Resistance to Human Rights at the World Bank*, in CLIMATE CHANGE, INDIGENOUS PEOPLES, AND THE SEARCH FOR LEGAL REMEDIES (Elizabeth Kronk et al. Jan. 2013).

⁶ Indian Law Resource Center, *Principles of International Law for Multilateral Development Banks: The Obligation to Respect Human Rights* (May 2009), http://indianlaw.org/sites/default/files/Principles%20Memo%20FINAL%20ENG_0_0.pdf.

⁷ Indian Law Resource Center, *Principles of International Law for REDD+: The Rights of Indigenous Peoples and the Legal Obligations of REDD+ Actors* (May 2012), http://www.indianlaw.org/sites/default/files/Indian%20Law%20Resource%20Center_REDD+%20Principles.pdf.

⁸ U.N. Int' L. Comm., *2011 Draft Articles on the Responsibility of International Organizations*, U.N. Doc. A/66/10 (2011).

⁹ *Ibid.*, Art. 1(1) and (2).

organization,¹⁰ as in the case of MDBs. These principles have been endorsed by a number of international law experts, including current and former members of the UN human rights treaty bodies, regional human rights bodies, and former and current special rapporteurs of the Human Rights Council. The Indian Law Resource Center's 2009 study, "Principles of International Law for Multilateral Development Banks: The Obligation to Respect Human Rights" is yet another resource.¹¹

A panel discussion by the Council regarding the international human rights law obligations of MDBs is a good first step to begin to clarify this critical area of law.

¹⁰ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (Febr. 29, 2012), http://www.fian.org/fileadmin/media/publications/2012.02.29_-_Maastricht_Principles_on_Extraterritorial_Obligations.pdf

¹¹ *Principles of International Law for Multilateral Development Banks*, *supra* note 6.